

### **IC 12-17.4-3**

#### **Chapter 3. Regulation of Child Caring Institutions**

### **IC 12-17.4-3-1**

#### **License required for operation**

Sec. 1. (a) A person may not operate a child caring institution without a license issued under this article.

(b) The state or a political subdivision of the state may not operate a child caring institution or receive children for placement in a child caring institution without a license issued under this article.

(c) A person may not operate a child caring institution if:

(1) the number of children maintained on the premises at any one (1) time is greater than the number authorized by the license; and

(2) the children are maintained in a building or place not designated by the license.

*As added by P.L.1-1993, SEC.142. Amended by P.L.61-1993, SEC.19.*

### **IC 12-17.4-3-2**

#### **Conditions for issuance of licenses**

Sec. 2. (a) A license may be issued only if the child caring institution is in substantial compliance with food, health, safety, and sanitation standards under rules adopted by the division under IC 12-17.4-2-4 or in accordance with a variance or waiver approved by the division under IC 12-17.4-2-8.

(b) A license may be issued only if the child caring institution is in compliance with the fire and life safety rules as determined by the state fire marshal under rules adopted by the division under IC 12-17.4-2-4 or in accordance with a variance or waiver approved by the division under IC 12-17.4-2-8.

(c) The division may issue a waiver or variance regarding a determination by the state fire marshal under subsection (b).

(d) Except as provided in subsection (e), the division may not issue a license under this chapter unless the child caring institution is staffed by, when children are being cared for, at least one (1) child care provider who is annually certified in a program on pediatric cardiopulmonary resuscitation and pediatric airway obstruction under the American Heart Association's Basic Life Support Course D or any other comparable course approved by the division.

(e) The requirement under subsection (d) does not apply to a child caring institution that only serves children who are at least thirteen (13) years of age and less than twenty-one (21) years of age. However, a child caring institution that only serves children who are at least thirteen (13) years of age and less than twenty-one (21) years of age must have on duty, when children are being cared for, at least one (1) child care provider who is annually certified in a program on cardiopulmonary resuscitation as required by the division.

*As added by P.L.1-1993, SEC.142. Amended by P.L.61-1993, SEC.20; P.L.2-1995, SEC.55; P.L.247-2001, SEC.7; P.L.47-2002,*

*SEC.3.*

**IC 12-17.4-3-3**

**Applying for licenses**

Sec. 3. (a) An applicant must apply for a child caring institution license on forms provided by the division.

(b) An applicant must submit the required information as part of the application.

(c) The applicant must submit with the application a statement attesting the following:

(1) That the applicant has not been convicted of:

(A) a felony; or

(B) a misdemeanor relating to the health and safety of children.

(2) That the applicant has not been charged with:

(A) a felony; or

(B) a misdemeanor relating to the health and safety of children;

during the pendency of the application.

(d) An applicant must submit the necessary information, forms, or consents for the division to conduct a criminal history check.

(e) The applicant shall do the following:

(1) Conduct a criminal history check of the applicant's employees and volunteers.

(2) Maintain records of each criminal history check.

*As added by P.L.1-1993, SEC.142. Amended by P.L.61-1993, SEC.21.*

**IC 12-17.4-3-3.5**

**Child caring institution established by county; operation**

Sec. 3.5. (a) A county may establish a child caring institution. The child caring institution may be operated by:

(1) the county; or

(2) a public or private agency under contract with the county; and must be operated under the rules adopted by the director of the division under IC 12-17.4.

(b) This section does not affect the following:

(1) IC 31-31-1-1 or IC 31-40, requiring the county fiscal body to appropriate sufficient money to pay for services ordered by the juvenile court.

(2) IC 31-31-8, authorizing the juvenile court to establish detention and shelter care facilities.

(3) IC 12-13-5 and IC 12-19-1, requiring the division and the county departments to provide care and treatment for delinquent children and children in need of services.

*As added by P.L.61-1993, SEC.22. Amended by P.L.1-1997, SEC.73.*

**IC 12-17.4-3-4**

**Grounds for denial of license applications**

Sec. 4. The following constitute sufficient grounds for a denial of

a license application:

- (1) A determination by the division of child abuse or neglect (as defined in IC 31-9-2-14) by the applicant.
- (2) A criminal conviction of:
  - (A) a felony; or
  - (B) a misdemeanor related to the health and safety of a child.
- (3) A determination by the division that the applicant made false statements in the applicant's application for licensure.
- (4) A determination by the division that the applicant made false statements in the records required by the division.

*As added by P.L.1-1993, SEC.142. Amended by P.L.61-1993, SEC.23; P.L.1-1997, SEC.74.*

#### **IC 12-17.4-3-5**

##### **Incomplete applications**

Sec. 5. The division may not act on an incomplete application. The division shall return an incomplete application with a notation concerning omissions. The return of an incomplete application is without prejudice.

*As added by P.L.1-1993, SEC.142.*

#### **IC 12-17.4-3-6**

##### **Investigation of applicants**

Sec. 6. The division shall investigate a person seeking licensure to determine whether the person is in compliance with this article and the rules adopted under this article. The investigation shall be conducted at a reasonable time and in a reasonable manner, in announced or unannounced visits. Activities may include onsite inspections, record reading, observation, and interviewing. The division may require that evidence of compliance with the rules be presented in a form and manner specified in the rules.

*As added by P.L.1-1993, SEC.142.*

#### **IC 12-17.4-3-7**

##### **Issuance of licenses**

Sec. 7. The division shall issue a license to a person who meets all of the license requirements when an investigation shows the applicant to be in compliance under this article.

*As added by P.L.1-1993, SEC.142.*

#### **IC 12-17.4-3-8**

##### **Eligibility for waivers and variances**

Sec. 8. A child caring institution may be eligible to receive a waiver or variance from the requirements of this chapter by complying with IC 12-17.4-2-8.

*As added by P.L.1-1993, SEC.142.*

#### **IC 12-17.4-3-8.5**

##### **Waiver of maximum stay for child**

Sec. 8.5. (a) The division may grant a waiver of the sixty (60) day

maximum stay for a child if the child caring institution licensed as a shelter care facility applies for the waiver before the expiration of the sixty (60) day period.

(b) The child caring institution shall document in the request for a waiver that the waiver is in the best interest of the child.

*As added by P.L.61-1993, SEC.24.*

#### **IC 12-17.4-3-9**

##### **Denial of licenses**

Sec. 9. (a) The division shall deny a license when an applicant fails to meet the requirements for a license.

(b) The division shall send written notice by certified mail that the application has been denied and give the reasons for the denial.

(c) An administrative hearing concerning the denial of a license shall be provided upon written request by the applicant. The request must be made not more than thirty (30) days after receiving the written notice under subsection (b).

(d) An administrative hearing shall be held not more than sixty (60) days after receiving the written request.

(e) An administrative hearing shall be held in accordance with IC 4-21.5-3.

(f) The division shall issue a decision not more than sixty (60) days after the conclusion of a hearing.

*As added by P.L.1-1993, SEC.142.*

#### **IC 12-17.4-3-10**

##### **Investigation of unlicensed premises**

Sec. 10. The division is responsible for investigating any premises that the division has reason to believe are being used for child care without a license in circumstances where a license is required.

*As added by P.L.1-1993, SEC.142.*

#### **IC 12-17.4-3-11**

##### **License duration, transferability, renewal, and display**

Sec. 11. (a) A license for a child caring institution expires four (4) years after the date of issuance, unless the license is revoked, modified to a probationary or suspended status, or voluntarily returned.

(b) A license issued under this chapter:

(1) is not transferable;

(2) applies only to the licensee and the location stated in the application; and

(3) remains the property of the division.

(c) When a licensee submits a timely application for renewal, the current license shall remain in effect until the division issues a license or denies the application.

(d) A current license must be publicly displayed.

*As added by P.L.1-1993, SEC.142. Amended by P.L.61-1993, SEC.25; P.L.234-2005, SEC.35.*

Repealed

*(Repealed by P.L.234-2005, SEC.192.)*

#### **IC 12-17.4-3-13**

##### **Probationary licenses**

Sec. 13. (a) The division may grant a probationary license to a licensee who is temporarily unable to comply with a rule if:

- (1) the noncompliance does not present an immediate threat to the health and well-being of the children;
- (2) the licensee files a plan with the division, state department of health, or the state fire marshal to correct the areas of noncompliance within the probationary period; and
- (3) the division, state department of health, or state fire marshal approves the plan.

(b) A probationary license is valid for not more than six (6) months. The division may extend a probationary license for one (1) additional period of six (6) months.

(c) A license is invalidated when a probationary license is issued.

(d) At the expiration of a probationary license, the division shall reinstate the original license to the end of the original term of the license, issue a new license, or revoke the license.

(e) Upon receipt of a probationary license, the licensee shall return to the division the previously issued license.

*As added by P.L.1-1993, SEC.142.*

#### **IC 12-17.4-3-14**

##### **Inspections**

Sec. 14. The division and the state fire marshal shall do the following:

- (1) Make annual onsite inspections.
- (2) Keep written records of their monitoring activities and inspections.

*As added by P.L.1-1993, SEC.142.*

#### **IC 12-17.4-3-15**

##### **Cooperation by licensees**

Sec. 15. A licensee shall cooperate with the division and the state fire marshal in carrying out the activities required by section 14 of this chapter, including permitting the division and the state fire marshal to conduct announced or unannounced inspections.

*As added by P.L.1-1993, SEC.142.*

#### **IC 12-17.4-3-15.5**

##### **Sprinkler system requirements**

Sec. 15.5. The fire prevention and building safety commission may not adopt rules requiring the installation of a sprinkler system in a living unit of a licensed child caring institution in which fewer than sixteen (16) children reside, each of whom is:

- (1) ambulatory; and
- (2) at least six (6) years of age.

*As added by P.L.61-1993, SEC.26.*

### **IC 12-17.4-3-16**

#### **Records**

Sec. 16. (a) A licensee shall keep records regarding each child in the control and care of the licensee as the division requires and shall report to the division upon request the facts the division requires with reference to children.

(b) The division shall keep records regarding children and facts learned about children and the children's parents or relatives confidential.

(c) The following have access to records regarding children and facts learned about children:

- (1) A state agency involved in the licensing of the child caring institution.
- (2) A legally mandated child protection agency.
- (3) A law enforcement agency.
- (4) An agency having the legal responsibility to care for a child placed at the child caring institution.
- (5) The parent, guardian, or custodian of the child at the child caring institution.

*As added by P.L.1-1993, SEC.142.*

### **IC 12-17.4-3-17**

#### **Notice of enforcement actions; informal meetings**

Sec. 17. Except as provided in section 27 of this chapter, the division shall give a licensee thirty (30) days written notice by certified mail of an enforcement action. The licensee shall also be provided with the opportunity for an informal meeting with the division. The licensee must request the meeting not more than ten (10) working days after receipt of the certified notice.

*As added by P.L.1-1993, SEC.142.*

### **IC 12-17.4-3-18**

#### **Administrative hearings**

Sec. 18. (a) An administrative hearing concerning the decision of the division to impose a sanction under this chapter shall be provided upon a written request by the child caring institution. The request must be made not more than thirty (30) days after receiving notice under section 17 of this chapter. The written request must be made separately from an informal meeting request made under section 17 of this chapter.

(b) An administrative hearing shall be held not more than sixty (60) days after receiving the written request.

*As added by P.L.1-1993, SEC.142. Amended by P.L.61-1993, SEC.27.*

### **IC 12-17.4-3-19**

#### **Procedure for administrative hearings**

Sec. 19. A hearing requested under section 18 of this chapter shall be held in accordance with IC 4-21.5-3.

*As added by P.L.1-1993, SEC.142.*

**IC 12-17.4-3-20****Issuance of decisions**

Sec. 20. The division shall issue a decision not more than sixty (60) days after the conclusion of a hearing.

*As added by P.L.1-1993, SEC.142.*

**IC 12-17.4-3-21****Cessation of operation upon suspension of license**

Sec. 21. If a license is suspended, the licensed child caring institution shall cease operation and may not display the license.

*As added by P.L.1-1993, SEC.142.*

**IC 12-17.4-3-22****Reinstatement of suspended licenses**

Sec. 22. To reinstate a suspended license the following must occur:

- (1) The licensee must, not more than thirty (30) days after receiving the notice of the suspension, submit a plan of corrective action to the division for approval.
- (2) The plan must outline the steps and timetable for immediate correction of the violations that caused the division to suspend the license.
- (3) The division must approve the plan.

*As added by P.L.1-1993, SEC.142.*

**IC 12-17.4-3-23****Actions by division following suspensions of licenses**

Sec. 23. Following the suspension, the division shall do one (1) of the following:

- (1) Reinstate the license for the term of the original license.
- (2) Revoke the license.
- (3) Issue a new license.
- (4) Deny a reapplication.

*As added by P.L.1-1993, SEC.142.*

**IC 12-17.4-3-24****Cessation of operation upon revocation of license**

Sec. 24. A child caring institution shall cease operation when the license of the child caring institution is revoked.

*As added by P.L.1-1993, SEC.142.*

**IC 12-17.4-3-25****Notifications following revocation or suspension of licenses**

Sec. 25. (a) After a license is revoked or suspended, the division shall notify in writing each person responsible for each child in care to ensure that those children are removed.

(b) The written notice shall be sent to the last known address of the person responsible for the child in care and shall state that the license of the child caring institution has been revoked or suspended.

*As added by P.L.1-1993, SEC.142.*

### **IC 12-17.4-3-26**

#### **Judicial review**

Sec. 26. A final decision of the division made after a hearing is subject to judicial review under IC 4-21.5-5.

*As added by P.L.1-1993, SEC.142.*

### **IC 12-17.4-3-27**

#### **Investigations of noncompliance; injunctions; corrective action plans; removal of children; informal meetings**

Sec. 27. (a) The division shall investigate a report of a licensed child caring institution's noncompliance with this article and the rules adopted under this article if there is reasonable cause to believe that a licensee's noncompliance with this article and rules adopted under this article creates an imminent danger of serious bodily injury to a child or an imminent danger to the health of a child and report the division's findings to the attorney general and to the county department of public welfare attorney and the prosecuting attorney in the county where the institution is located.

(b) The attorney general or the county department of public welfare attorney may do the following:

(1) Seek the issuance of a search warrant to assist in the investigation.

(2) File an action for injunctive relief to stop the operation of a child caring institution if there is reasonable cause to believe that a licensee's noncompliance with this article and the rules adopted under this article creates an imminent danger of serious bodily injury to a child or an imminent danger to the health of a child.

(c) The division may require a plan of corrective action for emergency protection of the children described in subsection (b).

(d) The division may provide for the removal of children from child caring institutions described in subsection (b).

(e) An opportunity for an informal meeting with the division shall be available after the injunctive relief is ordered.

*As added by P.L.1-1993, SEC.142.*

### **IC 12-17.4-3-28**

#### **Expiration of injunctions for creation of imminent danger**

Sec. 28. A court order granted under section 27(b)(2) of this chapter expires upon the later of the following:

(1) Sixty (60) days after the order is issued.

(2) When a final division decision is issued under sections 18 through 20 of this chapter if notice of an enforcement action is issued under section 17 of this chapter.

*As added by P.L.1-1993, SEC.142.*

### **IC 12-17.4-3-29**

#### **Grounds for revocation of licenses**

Sec. 29. The following constitute sufficient grounds for revocation of a license:

- (1) A determination by the division of child abuse or neglect (as defined in IC 31-9-2-14) by the licensee.
- (2) A criminal conviction of any of the following:
  - (A) A felony.
  - (B) A misdemeanor related to the health or safety of a child.
- (3) A determination by the division that the licensee made false statements in the licensee's application for licensure.
- (4) A determination by the division that the licensee made false statements in the records required by the division.

*As added by P.L.1-1993, SEC.142. Amended by P.L.61-1993, SEC.28; P.L.2-1995, SEC.56; P.L.1-1997, SEC.75.*

### **IC 12-17.4-3-30**

#### **Disciplinary sanctions**

Sec. 30. (a) A licensee shall operate a child caring institution in compliance with the rules established under this article and is subject to the disciplinary sanctions under subsection (b) if the division finds that the licensee has violated this article or a rule adopted under this article.

(b) After complying with the procedural provisions in sections 17 through 20 of this chapter, the division may impose any of the following sanctions when the division finds that a licensee has committed a violation under subsection (a):

- (1) Suspend the license for not more than six (6) months.
- (2) Revoke the license.

*As added by P.L.1-1993, SEC.142.*

### **IC 12-17.4-3-31**

#### **Investigations of unlicensed operation; injunctions; civil penalties**

Sec. 31. (a) The division shall investigate a report of an unlicensed child caring institution and report the division's findings to the attorney general and to the county department of public welfare attorney and the prosecuting attorney in the county where the institution is located.

(b) The attorney general or the county department of public welfare attorney may do the following:

- (1) Seek the issuance of a search warrant to assist in the investigation.
- (2) File an action for injunctive relief to stop the operation of a child caring institution if there is reasonable cause to believe that the child caring institution is operating without a license required under this article.
- (3) Seek in a civil action a civil penalty not to exceed one hundred dollars (\$100) a day for each day a child caring institution is operating without a license required under this article.

(c) An opportunity for an informal meeting with the division shall be available after the injunctive relief is ordered.

(d) The civil penalties collected under this section shall be deposited in the child care fund.

*As added by P.L.1-1993, SEC.142.*

**IC 12-17.4-3-32**

**Expiration of injunctions for unlicensed operation**

Sec. 32. A court order granted under section 31(b)(2) of this chapter expires when the child caring institution is issued a license.

*As added by P.L.1-1993, SEC.142.*

**IC 12-17.4-3-33**

**Violations of chapter**

Sec. 33. A person who knowingly or intentionally violates this chapter commits a Class B misdemeanor.

*As added by P.L.1-1993, SEC.142.*